

# Consumer Assistance Partner Bulletin



## Bulletin 2013-1

In 2013, the Minnesota Legislature enacted Minnesota Statutes chapter 62V that establishes the Minnesota Insurance Marketplace ("MNsure") as the state health insurance exchange designed to facilitate and simplify the comparison, choice, enrollment and purchase of health plans for individuals and small group employers purchasing health insurance in Minnesota.

Certain provisions of the federal Patient Protection and Affordable Care Act ("ACA") and proposed federal regulations implementing those provisions direct all health insurance exchanges to establish Navigator programs through which certified Navigators may facilitate a consumer's enrollment in a Qualified Health Plan ("QHP") and assist consumers with submitting the eligibility application, clarifying distinctions among QHPs and helping individuals make decisions during the health plan selection process. The background information summarizing these proposed regulations, found at Federal Register, volume 78, number 66, page 20583, states that:

Navigators will not make eligibility determinations and will not select QHPs for consumers or enroll applicants into QHPs, but will help consumers through the eligibility and enrollment process. The Exchange regulations, at 45 CFR 155.400(a), state that "[t]he Exchange must accept a QHP selection from an applicant \* \* \* and must—(1) Notify the issuer of the applicant's selected QHP; and (2) Transmit information necessary to enable the QHP issuer to enroll the applicant" (emphasis added). Additionally, as articulated in 45 CFR § 155.310(d), the Exchange is responsible for making eligibility determinations. Taken together, these regulations clearly mean that the Exchange, not Navigators, must determine eligibility and enroll applicants into QHPs. Additionally, a Navigator cannot make the decision for an applicant as to which QHP to select. That said, Navigators may play an important role in facilitating a consumer's enrollment in a QHP by providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application, clarifying the distinctions among QHPs, and helping qualified individuals make informed decisions during the health plan selection process.

Under Minnesota Statutes, section 62V.05, subdivision 4, MNsure has authority to establish policies and procedures for operation of a Navigator program, an in-person assister program, and other customer service functions for MNsure. On April 29, 2013, MNsure issued a final rule

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detailing various requirements for “consumer assistance partners,” defined in Minnesota Rules, Part 7700.0200, subpart 7 as including Navigators, In-Person Assistants, and Certified Application Counselors. Part 7700.0040 of the rule outlines the consumer assistance services that can be provided by either consumer assistance partners or insurance producers to guide consumers through the application and enrollment process, and facilitate access to the range of health coverage options available through MNsure. However, Part 7700.0040 of the rule also states that, “no consumer assistance partner may provide a service that requires licensure under Minnesota Statutes chapter 60K unless the consumer assistance partner has the appropriate licensure under Minnesota Statutes chapter 60K,” which is a direct reference to the requirement that individuals who meet the definition of an insurance producer under Minnesota Statutes section 60K.31 must be licensed and comply with the requirements of Minnesota Statutes, chapter 60K.

Given the recent release of the abovementioned federal regulations and state rules, questions have been raised regarding the type of services a consumer assistance partner can provide without being licensed as insurance producer under Minnesota Statutes, section 60K.32. In reading the state and federal law and regulatory requirements together, MNsure and Commerce provide the following guidance to assist consumer assistance partners with understanding the application of Minnesota Statutes, chapter 60K within the context of services they may provide through MNsure:

- A consumer assistance partner, as defined under Minnesota Rule, part 7700.0020, subpart 7, that negotiates, sells or solicits insurance by recommending a specific QHP to a consumer or making a decision on behalf of a consumer as to which QHP to select must be licensed as an insurance producer under Minnesota Statutes, section 60K.32. Failure to comply with section 60K.32 may result in enforcement action by the Minnesota Department of Commerce.
- A consumer assistance partner, as defined under Minnesota Rule, part 7700.0020, subpart 7, that facilitates a consumer’s QHP enrollment decision by providing fair, impartial and accurate information, including describing benefits, terms, or conditions of QHPs without being licensed as an insurance producer, shall not be considered in violation of Minnesota Statutes, section 60K.32.

As specified in Minnesota Rules, part 7700.0050, MNsure will develop a certification training program and assessment of proficiency for consumer assistance partners, and will include in this program an overview of the Minnesota licensure requirements to sell, solicit or negotiate insurance in Minnesota. The certification training program for consumer assistance partners is currently under development and will incorporate the guidance contained in this document.

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